

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFERY DYE,

Plaintiff,

v.

Case No. 2:10-cv-10657
HON. AVERN COHN

KAREN JOHNSON, et al.,

Defendants.

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**ORDER DENYING PETITIONER'S MOTION TO RECALL OR
RESCIND THE FORMER ORDER OF SUMMARY DISMISSAL (Doc. 8)**

I.

This is a pro se prisoner civil rights case brought by a state prisoner under 42 U.S.C. § 1983. On April 7, 2010, the Court dismissed the complaint because it was filed outside the statute of limitations period. (Doc. 6). Before the Court is plaintiff's "Motion to Recall or Rescind the Former Order of Summary Dismissal," filed on September 6, 2011, eighteen months after the complaint was dismissed. The Court construes the motion as a motion for relief from judgment under Fed. R. Civ. P. 60(b). For the reasons that follow, the motion will be denied.

II.

A Rule 60(b) motion may be granted only for certain specified reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud, mis-representation, or the like; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment

should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. When none of the first five enumerated examples of Rule 60(b) apply, relief may only be available when exceptional or extraordinary circumstances are present. Cincinnati Ins. Co. v. Byers, 151 F.3d 574, 578 (6th Cir. 1998).

Plaintiff says that in 2002, he was denied access to the courts regarding his right to file a motion for relief from judgment under M.C.R. 6.500. In this motion, he continues to argue that he is being denied access to the courts and that the Court erred by dismissing his complaint on the ground that his claims were barred by the statute of limitations. Plaintiff has not supplied the Court with any documentation that its conclusion was in error. Accordingly, he has failed to show that he is entitled to relief for any of the reasons set forth in Rule 60 (b). Accordingly, the motion is DENIED.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: December 21, 2011

I hereby certify that a copy of the foregoing document was mailed to Jeffery Dye, 149800, Newberry Correctional Facility, Central Complex, 3001 Newberry Avenue Newberry, MI 49868 on this date, December 21, 2011, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160